

years or 150,000 miles, whichever occurs first.

(2)(i) For any test group certified to the optional 15 year/150,000 mile useful life, the manufacturer may generate additional NO_x credits, except as prohibited in paragraph (g)(3) of this section.

(ii) The manufacturer must calculate these extra NO_x credits, where permitted, by substituting an adjusted NO_x standard for the applicable NO_x standard from the full useful life certification bin when it calculates the applicable fleet average NO_x emissions by the procedure in paragraph (f) of this section. The adjusted standard must be equal to the applicable full useful life NO_x standard multiplied by 0.85 and rounded to one more decimal place than the number of decimal places as the applicable full useful life NO_x standard.

(3) A manufacturer electing not to comply with applicable intermediate life standards as permitted under § 86.1811-04(c)(4) may not generate additional credits from vehicles certified to a useful life of 15 years/150,000 miles; except that, for bins where such intermediate life standards do not exist or are specifically deemed to be optional in § 86.1811-04(c)(4), the manufacturer may generate additional NO_x credits from vehicles certified to a useful life of 15 years/150,000 miles.

(h) *Additional credits for vehicles certified to low bins.* A manufacturer may obtain additional NO_x credits by certifying vehicles to bins 1 and/or 2 in model years from 2001 through 2005 subject to the following requirements:

(1) When computing the fleet average Tier 2 NO_x emissions using the formula in paragraph (f)(2) of this section, the manufacturer may multiply the number of vehicles certified to bins 1 and 2 by the applicable multiplier shown in Table S04-11 when computing the denominator in the formula. These multipliers may not be used after model year 2005. The table follows:

TABLE S04-11—MULTIPLIERS FOR ADDITIONAL TIER 2 NO_x CREDITS FOR BIN 1 AND 2 LDV/TS

Bin	Model year	Multiplier 73
2	2001, 2002, 2003, 2004, 2005	1.5
1	2001, 2002, 2003, 2004, 2005	2.0

(2) Optionally, instead of the process described in paragraph (h)(1) of this section, when computing Tier 2 NO_x credits using the formula in § 86.1861-04(b)(1), the manufacturer may multiply the number of vehicles certified to bin 1 and bin 2 by the applicable multiplier shown in Table S04-11 in paragraph (h)(1) of this section when computing the “Total number of Tier 2 Vehicles Sold, Including ZEVs and HEVs”. These multipliers may not be used after model year 2005.

[65 FR 6866, Feb. 10, 2000, as amended at 66 FR 19310, Apr. 13, 2001]

§ 86.1861-04 How do the Tier 2 and interim non-Tier 2 NO_x averaging, banking and trading programs work?

(a) *General provisions for Tier 2 credits and debits.* (1) A manufacturer whose Tier 2 fleet average NO_x emissions exceeds the 0.07 g/mile standard must complete the calculation at paragraph (b) of this section to determine the size of its NO_x credit deficit. A manufacturer whose Tier 2 fleet average NO_x emissions is less than or equal to the 0.07 g/mile standard must complete the calculation in paragraph (b) of this section if it desires to generate NO_x credits. In either case, the number of credits or debits determined in the calculation at paragraph (b) of this section must be rounded to the nearest whole number.

(2) Credits generated according to the calculation in paragraph (b)(1) of this section may be banked for future use or traded to another manufacturer.

(3) NO_x credits are not subject to any discount or expiration date except as required under the deficit carryforward provisions of § 86.1860-04(e)(2).

(4) If a manufacturer calculates that it has negative credits (debits or a credit deficit) for a given model year, it must obtain sufficient credits, as required under § 86.1860-04(e)(2), from vehicles produced by itself or another manufacturer in a model year no later than the third model year following the model year for which it calculated the credit deficit. (Example: if a manufacturer calculates that it has a NO_x credit deficit for the 2008 model year, it must obtain sufficient NO_x credits to

Environmental Protection Agency

§ 86.1861-04

offset that deficit from its own production or that of other manufacturers' 2011 or earlier model year vehicles.)

(6)(i) Manufacturers may not use NO_x credits to comply with the NLEV requirements of subpart R of this part.

(ii) Manufacturers may not use NMOG credits generated by vehicles certified to the NLEV requirements of subpart R of this part to comply with any NO_x requirements of this subpart.

(iii) Manufacturers may not use NO_x credits generated by interim non-Tier 2 vehicles to comply with the fleet average NO_x standard for Tier 2 vehicles.

(iv) Manufacturers may not use NO_x credits generated by Tier 2 vehicles to comply with any fleet average NO_x standard for interim non-Tier 2 vehicles, except as permitted under § 86.1860-04(e).

(v) Manufacturers may not use NO_x credits generated by interim non-Tier 2 LDV/LLDTs to comply with the fleet average NO_x standard for interim non-Tier 2 HLD/MDPVs.

(vi) Manufacturers may not use NO_x credits generated by interim non-Tier 2 HLD/MDPVs to comply with the fleet average NO_x standard for interim non-Tier 2 LDV/LLDTs.

(vii) Manufacturers may not use NO_x credits generated by Tier 2 LDV/LLDTs to comply with the Tier 2 NO_x average standard for HLD/MDPVs before the 2009 model year.

(viii) Manufacturers may not use NO_x credits generated by Tier 2 HLD/MDPVs to comply with the Tier 2 NO_x average standard for LDV/LLDTs before the 2009 model year.

(7) Manufacturers may bank Tier 2 NO_x credits for later use to meet the Tier 2 fleet average NO_x standard or trade them to another manufacturer. Credits are earned on the last day of the model year. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any credit deficit, where the deadline to offset that credit deficit has not yet passed.

(8) There are no property rights associated with NO_x credits generated under this subpart. Credits are a limited authorization to emit the designated amount of emissions. Nothing in this part or any other provision of law should be construed to limit EPA's

authority to terminate or limit this authorization through a rulemaking.

(b) *Calculating Tier 2 credits and debits.*

(1) Manufacturers that achieve fleet average NO_x values from the calculation in § 86.1860-04(f), lower than the applicable fleet average NO_x standard, may generate credits for a given model year, in units of vehicle-g/mi NO_x, determined in this equation:

$$[(\text{Fleet Average NO}_x \text{ Standard}) - (\text{Manufacturer's Fleet Average NO}_x \text{ Value})] \times (\text{Total Number of Tier 2 Vehicles Sold, Including ZEVs and HEVs}).$$

Where: The number of Tier 2 vehicles sold is based on the point of first sale and does not include vehicles sold in California or a state that adopts, and has in effect for that model year, California emission requirements.

(2) Where the result of the calculation in paragraph (b)(1) of this section is a negative number, the manufacturer must generate negative NO_x credits (debits).

(c) *Early banking.* (1)(i) Manufacturers may certify LDV/LLDTs to the Tier 2 FTP exhaust standards in § 86.1811-04 for model years 2001-2003 in order to bank credits for use in the 2004 and later model years. Such vehicles must also meet SFTP exhaust emission standards specified in § 86.1811-04.

(ii) Manufacturers may certify HLD/MDPVs to the Tier 2 FTP exhaust standards in § 86.1811-04 for model years 2001-2007 in order to bank credits for use in the 2008 and later model years. Such vehicles must also meet applicable SFTP exhaust emission standards specified in § 86.1811-04.

(iii) This process is referred to as "early banking" and the resultant credits are referred to as "early credits". In order to bank early credits, a manufacturer must comply with all exhaust emission standards and requirements applicable to Tier 2 LDV/LLDTs and/or HLD/MDPVs, as applicable, except as allowed under paragraph (c)(4) of this section.

(2) To generate early credits, a manufacturer must separately compute the sales weighted NO_x average of the LDV/LLDTs and HLD/MDPVs it certifies to the Tier 2 exhaust requirements and separately compute credits

using the calculations in this section and in § 86.1860-04.

(3) Early HLD/MDPV credits may not be applied to LDV/LLDTs before the 2009 model year. Early LDV/LLDT credits may not be applied to HLD/MDPVs before the 2009 model year.

(4) Manufacturers may generate early Tier 2 credits from LDVs, LDTs and LDTs that are certified to a full useful life of 100,000 miles, provided that the credits are prorated by a multiplicative factor of 0.833 (the quotient of 100,000/120,000). Where a manufacturer has both 100,000 and 120,000 mile full useful life vehicles for which it desires to bank early credits, it must compute the credits from each group of vehicles separately and then add them together.

(5) Manufacturers may bank early credits for later use to meet the Tier 2 fleet average NO_x standard or trade them to another manufacturer subject to the restriction in paragraph (c)(3) of this section.

(6) Early credits must not be used to comply with the fleet average NO_x standards for interim non-Tier 2 vehicles.

(7) Nothing in this section prevents the use of the NMOG values of 2003 and earlier model year LDV/LLDTs from being used in calculations of the NMOG fleet average and subsequent NMOG credit generation, under subpart R of this part.

(d) *Reporting and recordkeeping for Tier 2 NO_x credits including early credits.* Each manufacturer must comply with the reporting and recordkeeping requirements of § 86.1862-04.

(e) *Fleet average NO_x debits.* (1) Manufacturers must offset any debits for a given model year by the fleet average NO_x reporting deadline for the third model year following the model year in which the debits were generated as required in § 86.1860.04(e)(2). Manufacturers may offset debits by generating credits or acquiring credits generated by another manufacturer.

(2)(i) Failure to meet the requirements of paragraphs (a) through (d) of this section and of this paragraph (e), within the required timeframe for offsetting debits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying vehicles

not covered by the certificate must be determined according to this section.

(ii) If debits are not offset within the specified time period, the number of vehicles not meeting the fleet average NO_x standards and not covered by the certificate must be calculated by dividing the total amount of debits for the model year by the fleet average NO_x standard applicable for the model year in which the debits were first incurred.

(iii) EPA will determine the vehicles for which the condition on the certificate was not satisfied by designating vehicles in those test groups with the highest certification NO_x emission values first and continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. If this calculation determines that only a portion of vehicles in a test group contribute to the debit situation, then EPA will designate actual vehicles in that test group as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(3) If a manufacturer ceases production of LDV/Ts and MDPVs or is purchased by, merges with or otherwise combines with another manufacturer, the manufacturer continues to be responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered to be a violation of paragraph (e)(1) of this section and may subject the manufacturer to an enforcement action for sale of vehicles not covered by a certificate, pursuant to paragraph (e)(2) of this section.

(4) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (e)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of vehicles not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (e)(1) of this section.

(f) *NO_x credit transfers.* (1) EPA may reject NO_x credit transfers if the involved manufacturers fail to submit the credit transfer notification in the annual report.

(2) A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (a)(2) and (a)(7) of this section.

(3) In the event of a negative credit balance resulting from a transaction, both the buyer and seller are liable, except in cases involving fraud. EPA may void *ab initio* the certificates of conformity of all engine families participating in such a trade.

(4)(i) If a manufacturer transfers a credit that it has not generated pursuant to paragraph (b) of this section or acquired from another party, the manufacturer will be considered to have generated a debit in the model year that the manufacturer transferred the credit. The manufacturer must offset such debits by the deadline for the annual report for that same model year.

(ii) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (e) of this section.

(g) *Interim non-Tier 2 NO_x credits and debits; Interim non-Tier 2 averaging, banking and trading.* Interim non-Tier 2 NO_x credits must be generated, calculated, tracked, averaged, banked, traded, accounted for and reported upon separately from Tier 2 credits. The provisions of this section applicable to Tier 2 NO_x credits and debits and Tier 2 averaging banking and trading are applicable to interim non-Tier 2 LDV/LLDTs and interim non-Tier 2 HLD/MDPVs with the following exceptions:

(1) Provisions for early banking under paragraph (c) of this section do not apply.

(2) The fleet average NO_x standard used for calculating credits is 0.30 grams per mile for interim non-Tier 2 LDV/LLDTs and 0.20 g/mi for interim non-Tier 2 HLD/MDPVs. (The interim non-Tier 2 NO_x standard of 0.30 (or 0.20) g/mi replaces 0.07 in the text and calculation in this section.)

(3) Interim non-Tier 2 NO_x credit deficits may be carried forward for three years subject to the requirements of § 86.1860-04(e).

§ 86.1862-04 Maintenance of records and submittal of information relevant to compliance with fleet average NO_x standards.

(a) *Maintenance of records.* (1) The manufacturer producing any light-duty vehicles and/or light-duty trucks subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each model year:

(i) Model year;

(ii) Applicable fleet average NO_x standard: 0.07g/mi for Tier 2 LDV/Ts; 0.30 g/mi for interim non-Tier 2 LDV/LLDTs; or 0.20 g/mi for interim non-Tier 2 HLD/MDPVs;

(iii) Fleet average NO_x value achieved; and

(iv) All values used in calculating the fleet average NO_x value achieved.

(2) The manufacturer producing any LDV/Ts or MDPVs subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each LDV/T or MDPV subject to this subpart:

(i) Model year;

(ii) Applicable fleet average NO_x standard;

(iii) EPA test group;

(iv) Assembly plant;

(v) Vehicle identification number;

(vi) NO_x standard to which the LDV/T or MDPV is certified; and

(vii) Information on the point of first sale, including the purchaser, city, and state.

(3) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the annual report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion to require the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer must

[65 FR 6868, Feb. 10, 2000, as amended at 66 FR 19311, Apr. 13, 2001]